LEE LEAN LOW

v.

CHEW IN HAI & 2 ORS.

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK JC
[CIVIL APPEAL NO. 12-26-92 (92)]
16 AUGUST 1993

LANDLORD & TENANT: Claim for vacant possession - Whether appellant/tenant was a tenant who had a tenancy coupled with equity - Whether notice to quit was bad in law and whether it terminates the tenancy or whether it must also satisfy the equity.

PRACTICE & PROCEDURE: Appeal to High Court from Subordinate Court - Whether High Court should interfere with finding of fact by Subordinate Court.

In this case, the respondents, who were the registered proprietors of a certain portion of land on which stood a dwelling house ("the said house"), were given vacant possession to the same against the appellant who was the occupier thereof. The appellant had bought the said house in 1965 from the then registered proprietor of the said land one Ong Song Moon (PW3) at RM500 and paid monthly ground rentals of RM10 from 1965 to 1981 to the said PW3. The respondents became the owners of the said land in 1981 when they bought the same from PW3. The appellant paid ground rents at RM10 from 1981 to June 1984 to the respondents. The respondents sought vacant possession of the said land by issuing a notice to quit to the appellant on 30 January 1990. The appellant resisted the suit brought by the respondents for vacant possession on the ground that the notice was bad in law and therefore had no effect and alternatively, it was alleged that the appellant was a tenant who had a tenancy coupled with an equity. The trial Court gave judgment to the respondents and also ordered *mesne* profits at the rate of RM20 per month from 1 March 1990 until vacant possession of the premises and costs. The appellant appealed. It was proved that the appellant had repaired the said house and had spent RM15,000 on repairs and therefore he was entitled to and should be construed to be an equitable tenant and therefore should be compensated. Also it was proved that the tiral Court did not consider the initial purchase of the said house by the appellant from PW3 as relevant in determining the *status quo* of the appellant and in coming to the conclusion that equity should be brought to protect the appellant.

Held

[1] The notice to quit was good in law and it had the effect of terminating the appellant's tenancy. Couched in clear and unambiguous words, the notice to quit was valid. It is trite law that though the notice to quit, clear and unambiguous in its terms may not operate *per se* to terminate the appellant's tenancy, and that if the appellant could prove to the satisfaction of the Court that he had a tenancy coupled with equity then the Court would come to his aid.

[2] The law tenancy coupled with an equity as found in the case of *Inwards v. Baker* [1965] 1 All ER 446 is that if the owner of a piece of land requests another or indeed allows another person to expend money on the piece of land in question under an expectation created or encouraged by the owner of the piece of land that he will be able to remain there, then in that situation, it raises an equity to the licensee such as to enable him to stay there.

[3] In this appeal from the facts no expectation was created or encouraged by the respondents including PW3, to the appellant to expend money on the said house and neither did they permit, encourage and induce the appellant to expend money on the said house. There was no evidence other than the allegation of the appellant, that the character of the said house had changed. There was no attempt made by the appellant to show proof that he had affected a change to the character of the said house by tendering photographs, calling witnesses and producing receipts of repairs and renovations to the said house. Neither was there an application made to the Court to inspect the said house.

[4] When the appellant bought the house in 1965 and continued to pay the monthly ground rentals he had acquired a monthly tenancy couped with equity. When the respondents became the successive owners the appellant continued to pay them ground rentals till June 1984 and till then the appellant had acquired a monthly tenancy coupled with

equity. But after June 1984, when the appellant failed and/or refused to pay the ground rentals to the respondents, his equitable right to remain on the said land, in the said house, expired.

[5] The trial Court was correct in holding, after applying the facts to the law, that the appellant had failed to prove that he had a tenancy coupled with an equity. The question of change of identity and character of premises is primarily an inference to be drawn by the trial Court, it is a question of fact and degree and if it has directed itself properly, an appellate Court can only interfere if it is quite plain that it has come to the wrong conclusion. In this appeal, it is plain that the trial Court had the advantage of seeing and hearing the witnesses and had come to the right conclusions that the appellant had no tenancy coupled with an equity.

[Appeal dismissed. Each party to bear his own costs here and in the Court below. Order for mesne profits at the rate of RM20 per month from 1 March 1990 is set aside. Appellant to deliver vacant possession of the premises to the respondent within two weeks from date of decision].

Cases referred to:
Sidebotham v. Holland [1895] 1 QB 378 ***(foll)***
Crate v. Miller [1947] 2 All ER 45 ***(foll)***
Inwards v. Baker [1965] 1 All ER 446, 448 ***(refd)***
Wong Yon Lin v. Liew Tham Soon & Ors. [1980] 2 MLJ 99 ***(refd)***
Mok Deng Chee v. Yap See Hoi & Ors. [1981] 2 MLJ 321 FC ***(refd)***
Khew Ah Bah v. Hong Ah Mye [1971] 2 MLJ 86 ***(refd)***
Krishna Sreedhara Panicka v. Chiam Soh Yong Realty Co. Ltd. [1976] 1 MLJ 224 ***(refd)***

Legislation referred to:
Control of Rent Act 1966

For the appellant - Abdul Aziz bin Ibrahim; M/s. Anthony & Co.
For the respondents - R. Ravindran; M/s. Xavier, Ravi & Sarjit Sidhu

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak JC:
This is an appeal from the decision of the learned Sessions Judge, Sessions Court, Parit Buntar, Perak ("the trial Court"), giving vacant possession of a certain portion of the land comprised in Lot 3306, 14 milestone, Jalan Pantai, Mukim of Kuala Kurau, Krian, Perak ("the said land") on which stood a dwelling house ("the said house"), not subject to the Control of Rent Act 1966, in favour of the respondents, the registered proprietors and against the appellant, the occupier thereof.

The facts shortly are these. In 1965, Ong Song Moon (Bong) (PW3), who was the then registered proprietor of the said land, sold the said house to the appellant in the sum of RM500. The appellant then occupied the said house and paid ground rents at RM7 per month from 1965 to 1981 to PW3. In 1981, PW3 sold the said land to the respondents (the father and his two sons) and thereafter from 1981 to 1984 the appellant paid the ground rents at RM10 per month to the respondents. On 30 January 1990, the respondents through their solicitors issued a notice to quit requiring the appellant to deliver up vacant possession of the premises within a month thereof. As can be expected, the appellant resisted the suit on the ground that the notice was bad in law and therefore had no effect and alternatively, it was alleged, that the appellant was a tenant who had a tenancy coupled with an equity.

The trial Court gave judgment to the respondents and also ordered *mesne* profits at the rate of RM20 per month from 1 March 1990 (though the statement of claim requested that *mesne* profits be calculated from 30 January 1990) until vacant possession of the premises and costs.

The notice to quit (exhibit P1) dated 30 January 1990 was good in law and it had the effect of terminating the appellant's tenancy. Couched in clear and unambiguous words, the notice to quit was valid and, if I may add, it followed the guidelines as set out in *Sidebotham v. Holland* [1895] 1 QB 378 and *Crate v. Miller* [1947] 2 All ER 45. The learned Counsel for the appellant took the correct approach in not attacking this point, in his convincing submission, before me.

It is now trite law that though the notice to quit, clear and unambiguous in its terms, may not operate *per se* to terminate the appellant's tenancy, and that, **if the appellant could prove to the satisfaction of the Court** that he had a tenancy coupled with equity, then the Court would come to his aid.

The locus classicus on tenancy coupled with an equity or simply an equitable estoppel can be

found in the case of *Inwards v. Baker* [1965] 1 All ER 446, 448, where Lord Denning M.R. said:

> It is quite plain from these authorities that, if the owner of land requests another or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with equity ... that the equity arising from the expectation of land does not fail ... The Court can look at the circumstances and see whether there is any equity arising out of the expenditure of money.

I shall now proceed to examine the circumstances in order to ascertain whether the appellant had acquired a tenancy coupled with an equity.

In 1965, PW3 sold the said house to the appellant for RM500 and the appellant paid a monthly ground rent of RM7 to PW3. Without fail, the appellant dutifully paid the ground rentals of RM7 per month from 1965 to 1981 to PW3. According to PW3, he did not give an assurance to the appellant that he (appellant) could occupy the said land for as long as he wished. PW3 was also not aware that the appellant had repaired the said house nor did the appellant seek PW3's permission in repairing or renovating the said house. PW3 was categorical in his evidence that though the said house was old it was habitable. PW3 also stated that if the appellant were to repair the said house, he (PW3) would not be in a position to know. In 1981, PW3 then sold the said land to the respondents and according to PW3 when this took place, there was no arrangement between the appellant and the respondents in regard to the said house.

One of the respondents by the name of Chew Teik Hup (PW2) gave evidence. PW2 admitted purchasing the said land from PW3 and at the time of purchase, the appellant was staying in the said house. According to PW2, the appellant was the ground tenant-paying ground rental of RM10 per month. There was an initial payment of the ground rental by the appellant, but later, the appellant defaulted. However, there was no evidence as to when the appellant actually stopped paying the ground rental to the respondents. Again, according to PW2, the appellant wanted to repair the said house but he was prevented from doing so. The appellant, therefore, did not repair the said house. There was also no arrangement between himself and PW3 in regard to the appellant. It was also in evidence that the appellant quarrelled with PW2 and, as a result, the appellant refused to pay the ground rental (again there was no specific date given by PW2 in regard to the quarrel). PW2 did say that he would not know whether the appellant had repaired or renovated the said house before PW2 bought over the said land from PW3. Finally, PW2 stated that in 1990, through his solicitors, he had objected to the appellant for repairing the said house.

Chew In Hai (PW1), the son of PW2, also gave evidence. PW1 stated that together with his father (PW2), and another brother by the name of Chew Eng Hua, they bought the said land in 1981 from PW3. Before purchasing the said land, PW1 stated that he, his father and Chew Eng Hua had visited the said land and knew that the appellant was staying in the said house, which said house was located on a portion of the said land. PW1 stated that the appellant paid the ground rents of RM10 per month from 1981 till June 1984. PW1 was categorical in that when he bought the said land, he told the appellant that in the event he (PW1) wanted to build a house on the said land, he would request the appellant to vacate the premises, and according to PW1, the appellant agreed to this proposal. PW1 disagreed in paying any compensation to the appellant as the latter had agreed to move willingly. And that the question of damages did not arise as the appellant had agreed to vacate the premises peacefully. According to PW1, the appellant would not claim for damages of the sums which he would incur if he were to move out of the said land. According to PW1, PW3 had spoken to the appellant and the latter agreed to vacate the premises without any compensation accorded to him. PW1 further stated that after he had purchased the said land, the appellant was told to vacate but he simply refused. The appellant then proceeded to repair the said house. PW1 was not happy with the presence of the appellant on the said land. PW1 stated that there was no agreement in regard to the ground rental payable by the appellant. Now, the appellant has refused to pay the ground rental. PW1 stated that the notice to quit dated 30 January 1990 (exhibit P1) had been served on the appellant. PW1 further stated that upon issuance of the notice to quit, the appellant proceeded to repair the said house. According to PW1, in 1990, the appellant repaired the said house on

two occasions. The repairs done in 1990 were normal repairs and concentrated on the roofs of the said house. PW1 further said that since 1981 the character of the said house is still the same with slight repairs done to the said house. Under cross-examination, PW1 stood firm and categorically denied that the appellant would only move if he was compensated. Under re-examination, PW1 stated that he would not have purchased the said house if he knew that he had to compensate the appellant, in order to effect removal of the appellant, from the premises. PW1 did say, however, that PW3 had told him that no compensation would be payable to the appellant, upon eviction of the appellant from the said land.

The appellant gave his evidence under oath. He stated that he bought the said house, in 1965, for RM500 from PW3. It was an oral agreement whereby PW3 allowed the appellant to stay in the premises for as long as he wished. That house was, in the words of the appellant: "Keadaan teruk semasa saya beli." According to the appellant, he had repaired periodically the said house from 1965 to 1980. Appellant said that he had repaired the walls, roofs and the ground site of the said house and had spent RM15,000 on repairs since 1965. Appellant stated that he was as poor as a churchmouse and, therefore, was unwilling to move. He would, however, be persuaded to move if he was compensated. Under cross-examination, the appellant could not assess the compensation sought for and left the matter entirely to the discretion of the trial Court. The appellant reiterated that he had spent RM15,000 on extensions and alleged that PW2's wife had encouraged him to stay in the said house for as long as he wished. However, the appellant agreed that he did not confirm this with PW2 or PW3. It was in evidence that PW2's wife had since died. Appellant also denied that PW3 did not encourage him to stay on the said land for as long as he wished.

Learned Counsel for the appellant made a concerted attack that the appellant had repaired the said house and had spent RM15,000 on repairs and, therefore, he was entitled to and should be construed to be an equitable tenant and, therefore, he should be compensated. From the authorities cited before me, my understanding of the law would be as follows.

If the owner of a piece of land requires another, or indeed, allows another person to expend money on the piece of land in question, under an **expectation created or encouraged** by the owner of the piece of land that he will be able to remain there, then in that situation, it raises an equity in the licensee such as to enable him to stay there. And in the case of a tenant, like the appellant, **upon proof that he had expended money on the said house with the permission encouragement and inducement from PW1, PW2, and PW3,** his position would even be stronger. He has a tenancy coupled with an equity. In such a situation, the respondents cannot simply recover possession of the said land by merely terminating the tenancy in the form of a notice to quit (exhibit P1); they must also satisfy the equity. I am fortified in arriving at this conclusion (but, of course, this conclusion would be dependent on the facts of the present appeal) by a passage appearing in the judgment of Lord Denning M.R. in the case of *Inwards v. Baker (supra)* at p. 449 and I quote:

> It is equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the Court to say in which way the equity can be satisfied.

There are two pertinent questions to ask in the present appeal, viz: Was an expectation created or encouraged by the respondents, including PW3, to the appellant, to expend money on the said house? Did the respondents, including PW3, permit, encourage and induce the appellant to expend money on the said house? From the recital of the facts, the answers are in the negative. The facts in the present appeal are poles apart from the facts in *Wong Yon Lin v. Liew Tham Soon & Ors.* [1980] 2 MLJ 99, in *Mok Deng Chee v. Yap See Hoi & Ors.* [1981] 2 MLJ 321 FC and in *Khew Ah Bah v. Hong Ah Mye* [1971] 2 MLJ 86.

In *Wong Yon Lin's* case *(supra)* in attempting to establish that the premises were not controlled premises within the meaning of the Control of Rent Act 1966, the respondents had discharged the burden of proof which lay on them by calling the clerk of the local Council to testify that the old building had been demolished and a new building constructed in 1961.

In *Mok Deng Chee's* case *(supra)*, the Court accepted the evidence that the old house was demolished and that a new one was built. There

was evidence that the appellant in that case had paid the second respondent RM500 as part payment of the agreed tea money.

In *Khew Ah Bah's* case *(supra)*, photographs were tendered and there was evidence that the house was built with the permission of the then owner of the land who granted a monthly tenancy of the land at a rental of RM3 per month. The trial Judge also visited and inspected the premises and came to the conclusion that the character of the house and changed.

In the present appeal, there was no evidence, other than the allegation by the appellant, that the character of the said house had changed. There was no attempt made by the appellant to show proof that he had effected a change to the character of the said house by tendering photographs, calling witnesses and to produce receipts of repairs and renovations to the said house. The appellant was represented by Counsel before the trial Court and surely these supportive evidence could easily be arranged. But, alas, nothing was done to fortify the appellant's case. Neither was there an application made to the trial Court to inspect the said house. On the other hand, PW3 was categorical in that he was not aware that the appellant had repaired the said house. PW2 echoed the same sentiment and he was more specific when he said that the appellant was prevented from repairing the said house. However, PW1 admitted that the appellant started to repair the said house after the notice to quit (exhibit P1) had been issued. The respondents are currently occupying the said land and their anxiety in regard to the presence of the appellant in the said house cannot be doubted. Words cannot express their feelings at the predicament in which they are in. No doubt when the appellant bought the said house in 1965 from PW3 at RM500 and continued paying the monthly ground rentals of RM7, he had acquired a monthly tenancy coupled with equity. And when the respondents became the successive owners, they had notice of the appellant's rights in respect of the said house and they continued to receive the ground rentals at RM10 per month from the appellant. It was in evidence that the appellant paid the ground rentals to the respondents from 1981 till June 1984 and it would be right to say that till June 1984, the appellant had acquired a monthly tenancy coupled with equity. But, after June 1984, when the appellant failed and/or refused to pay the ground rentals to the respondents, his equitable right to remain on the said land, in the said house, expired. The learned Counsel for the appellant argued that the trial Court did not consider the initial purchase of the said house at RM500 by the appellant from PW3 as relevant in determining the *status quo* of the appellant and in coming to the conclusion that equity should be brought in, to protect the appellant. However, on perusal of the record of proceedings, this complaint is totally misconceived. The trial Court, in a very careful judgment, rightly concluded, after applying the facts to the law, that the appellant had failed to prove that he had a tenancy coupled with an equity.

Now, it has been laid down in *Krishna Sreedhara Panicka v. Chiam Soh Yong Realty Co. Ltd*. [1976] 1 MLJ 224 by Raja Azlan Shah F.J. (as His Majesty then was) that the question of change of identity and character of premises is primarily an inference to be drawn by the trial Court, that it is a question of fact and degree and if it has directed itself properly, an appellate Court can only interfere if it is quite plain that it has come to the wrong conclusion. In the present appeal, it is plain that the trial Court had the advantage of seeing and hearing the witnesses and had come to the right conclusions that the appellant had no tenancy coupled with an equity.

For the reasons adumbrated above, and in view of the special features in the present appeal, especially the advanced age of the appellant, I make the following orders:

(1) the appeal is dismissed;
(2) each party to bear his own costs here and in the Court below;
(3) the order for *mesne* profits at the rate of RM20 per month from 1 March 1990 is set aside;
(4) the appellant to deliver vacant possession of the premises to the respondent within two weeks from today (i.e. 16 August 1993).

Appeal dismissed.

Order accordingly.